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10/725,666	12/02/2003	A. R. Tissington	PH002	5065

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EXAMINER	
JOSEPH, TONYA S	

ART UNIT	PAPER NUMBER
3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/725,666	TISSINGTON ET AL.	
	Examiner	Art Unit	
	TONYA JOSEPH	3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *10-16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

Claims 1-9 have been previously examined. Claims 1, 6-8 have been amended. No claims have been added or cancelled. Thus, claims 1-9 are presented for examination.

Response to Arguments

35 USC § 112 2nd Paragraph

Applicant's amendments of claims 6-8 have not remedied all of the deficiencies of the previously rejected claims and have also raised new issues. Claims 6-8 still recite the limitation, "suspicious circumstance" without a clear definition or indication of the scope. Furthermore, claim 8 recites, "wherein if in a response, particular evidence within the expanded risk profile contains..." Applicant has not indicated whether the response is an a, b, c or d.

As demonstrated above, Applicant's amendments are insufficient and the rejections are maintained.

35 USC 103

In response to applicant's argument that Stoica is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Stoica is directed to optimizing terms used in a profile to aid in extracting information during a search.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As of the most previous Office Action, the Examiner established a prima facie case and the burden was shifted to the Applicant. Because, the Applicant has failed to provide supporting evidence as to why the combination is insufficient, and has only relied on mere conclusory statements for support, Applicant's arguments are not persuasive

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. The term "suspicious" in claims 6-8 is a relative term which renders the claim indefinite. The term "suspicious" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the

art would not be reasonably apprised of the scope of the invention. For Examination purposes, Examiner is interpreting any package as being suspicious.

3. Claim 6-8, recite the similar limitation of exercising an option in response to a circumstance. However, the conditions under which the option is exercised in unclear. For Example, claim 6 recites wherein if in a minimal inspection of a container response, particular evidence within the expanded risk profile contains a suspicious circumstance, exercising response b. This step is unclear because, at this point in the method, the expanded risk profile has already been totally expanded and checked and a security risk is applied. There is no indication that the method goes back to the already totaled information profile to find new information. It appears as if Applicant meant to convey that wherein if in a minimal inspection of a container response, particular evidence within the inspection contains a suspicious circumstance, exercising response b. Appropriate correction is required to alleviate the ambiguity in the claim language.

4. Claim 8 recites the limitation, "…wherein if in a response, particular evidence within the expanded risk profile…".Applicant's claim 2, of which claim 8 is dependent, requires a response of a), b),c) or d). Since Applicant has failed to indicate either of the 4 choices, the claim is unclear. For Examination purposes, the Examiner is interpreting the amendment to be non-further limiting.

5. Claim 9 recites the limitation, "wherein under circumstances where an operator has an option to increase the risk profile risk of any or all containers based upon external factors" It is unclear what Applicant wishes to convey. For Examination

purposes, Examiner is interpreting increase the risk profile risk of any or all containers based upon external factors as meeting the limitations of the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morimoto U.S. Pre-Grant Publication No. 2002/0120475 A1 in view of Stoica U.S. Patent No. 6,728,701 B1 in further view of Webb U.S. Pre-Grant Publication No. 2004/0257225 A1 and Miller et al. U.S. Pre-Grant Publication No. 2005/0049892 A1.

8. As per Claim 1, Morimoto teaches ensuring data input in a format acceptable to a system for identifying contents and tracking at least one particular container (see para. 11-12 and 14), Morimoto does not explicitly teach the limitation taught by Stoica, identifying each item by a profile, checking said data input for each profile against a thesaurus-like data recognizer software program having access to multiple terms for at least one of the data inputs, and expanding the total amount of information kept for containers by matches in said thesaurus-like data recognizer software (see Col. 1 lines 57-67 and Col. 2 lines 10-24),

checking other sources against said expanded profile and determining whether data in said expanded profile has reference of interest to other sources' trigger information, and if so, adding said reference of interest to further expand said profile (see Col. 4 lines 8-

12), Morimoto teaches a container. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Morimoto to include the teachings of Stoica to organize a database. Morimoto in view of Stoica does not explicitly teach the limitation taught by Webb checking business rules against the total amount of information for said particular item to determine a security risk level, responding to said security risk level (see para. 18-21 and 98); Stoica teaches a further expanded profile. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Morimoto and Stoica to include the teachings of Webb to solicit a follow-up by the appropriate officials, as taught in Webb para. 98. Morimoto does not explicitly teach the risk profiles taught by Miller (see para. 10). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Morimoto, Stoica, Webb to include the teachings of Miller to determine the security factors associated with a container. The limitation, "thereby expanding said profile" is merely a statement of intended result and as such is afforded little patentable weight.

9. As per Claim 2, Morimoto in view of Stoica in further view of Webb and Miller teaches the method of claim 1 as described above. Morimoto does not explicitly teach the limitation taught by Webb wherein said response to said security risk level is one of several responses including either

a) a manual search of said container (see para. 18),

b) gamma irradiation inspection processing of said container and re-evaluation of said container's risk based on results of said irradiation inspection processing,

c) minimal inspection of container, and

d) allowing passage through checkpoint.

It would have been prima facie obvious to one or ordinary skill in the art at the time of invention to modify the methods Morimoto and Stoica to further include the teachings of Webb to determine appropriate unloading procedures, as taught by Webb para. 18.

10. As per Claim 9, Morimoto in view of Stoica in further view of Webb teaches the method of claim 1 as described above. Morimoto does not explicitly teach the limitation taught by Stoica, under circumstances where an operator has an option to increase the risk profile risk of any or all containers based upon external factors (see Col. 1 lines 57-67 and Col. 2 lines 10-24). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Morimoto to include the teachings of Stoica to organize a database.

11. Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morimoto U.S. Pre-Grant Publication No. 2002/0120475 A1 in view of Stoica U.S. Patent No. 6,728,701 B1 in further view of Webb U.S. Pre-Grant Publication No. 2004/0257225 A1 and Miller et al. U.S. Pre-Grant Publication No. 2005/0049892 A1 and Stratmoen U.S. Pre-Grant Publication No. 2004/0041706 A1.

12. As per Claims 3-5, Morimoto in view of Stoica in further view of Webb teaches the method of claim 2 as described above. Morimoto does not explicitly teach the limitation taught by Stratmoen wherein said responses are chosen based on a scaled risk profile having a high risk side and a low risk side (see para. 23 and 44). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention

to modify the methods of Morimoto, Stoica and Webb to include the teachings of Stratmoen to determine appropriate action for a container as taught in Stratmoen para. 23. Although Stratmoen teaches detaining a container with a high security risk (see para. 23), it doesn't teach wherein said step a is reserved for containers having been evaluated with a risk profile toward the high end of the scale; wherein regardless of a risk profile's scale, said container is subject to response b, and if as a result of said response b, a higher risk profile is developed for said container, then applying response a to said container or a low risk profile garners a c and d response from the system, however, it would have been prima facie obvious to try by one of ordinary skill in the art at the time of invention to performing any response since there are a finite number of identified, predictable and potential solutions to the a container being deemed a threat and one of ordinary skill in t the art could have pursued the known potential solutions with a reasonable expectation of success.

13. As per Claims 6-8, Morimoto in view of Stoica in further view of Webb and Stratmoen teaches the method of claim 5 as described above. Although Stratmoen teaches detaining a container with a high security risk (see para. 23), it doesn't teach wherein if in a c response, particular evidence within the expanded risk profile contains a suspicious circumstance, exercising response b or wherein if in a c response, particular evidence within the expanded risk profile contains a suspicious circumstance, exercising response a, however, it would have been prima facie obvious to try by one of ordinary skill in the art at the time of invention to performing any response since there are a finite number of identified, predictable and potential solutions to the a container

being deemed a threat and one of ordinary skill in t the art could have pursued the known potential solutions with a reasonable expectation of success.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TONYA JOSEPH whose telephone number is (571)270-1361. The examiner can normally be reached on Mon-Fri, 7:30 am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Igor N. Borissov/
Primary Examiner, Art Unit 3628